IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1182 OF 2007

Sayajirao Bapusaheb Mardane
and Anr. .. Petitioners

Versus

Gafur Ramjan Madari & Anr. .. Respondents

Mr.Tejpal Ingale for petitioners
Mr.Rahul Walvekar for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th December 2007

P.C.

. In regular civil appeal No.448 of 1998, which was challenging a decree of the trial court dismissing R.C.S.No.672 of 1994, the petitioner appellant applied for amendment of the plaint only to incorporate an averment that the predecessor in title of the petitioner appellant was the heir of original respondent No.1, inasmuch as he comes from Madari family. This

pedigree- genealogy remained to be mentioned in the plaint and only to incorporate that geneology, the amendment be allowed. However, that request has been turned down by the lower appellate court by observing that the said amendment is proposed in R.C.S.No.672 of 1994 and there is no explanation for the delay in moving the said application.

2. Having perused the petition and the annexures thereto including the order passed by the lower appellate court, I am of the view that sufficient safeguards being provided, the petitioner can be allowed to amend the plaint.

3. It is conceded before me by Mr.Ingale that the amendment is delayed and belated. In such circumstances, in my view, even if the plea is allowed to be incorporated in the plaint, it would be fair, just and proper not to permit any additional evidence being led at this stage. The

appeal is of the year 1998 and pending in the lower appellate court for the last more than nine years. In such circumstances, by compensating the respondent before the lower appellate court with costs, the plaint is allowed to be amended in terms of amendment application. The amendment shall only incorporate the genealogy of the Madari family. Further, the amendment being granted, does not mean that there is liberty to lead evidence. That request is expressly not granted. Plaint be amended in the lower appellate court within two weeks from today and the petitioner appellant to pay cost to the respondent quantified at Rs.2,500/- to be deposited or paid in the lower appellate court within two weeks from today. Additional written statement, if any, within two weeks from the date of receipt of amended plaint. The lower appellate court to endeavour and dispose of the appeal as expeditiously as possible thereafter. Petition disposed of.

(S.C.Dharmadhikari, J)